IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.751 OF 2004

IN

SUIT NO.708 OF 2004

...

Ismail Abdul Sattar Shaikh
and another ...Plaintiffs

v/s.

Abdulla Haider Shaikh
and others ...Defendants

...

Mr.Annu Eapen i/b Raymond & Co. for the Plaintiffs.

Mr.S.M. Sakhardande i/b Ms. S.S. Wagh for Defendants.

...

CORAM: D.K.DESHMUKH, J.

DATED: 14TH JANUARY,2005

P.C.:

1. This Notice of Motion is taken out by the Plaintiffs. The learned Counsel appearing for the Defendants states that the Defendants have no objection to motion being granted in terms of prayer clause (a) excluding the last sentence. By the last sentence of prayer clause (a), the Plaintiffs seek a temporary injunction from this court restraining the Defendants from preventing the Plaintiffs from developing the property. According to the Plaintiffs, Plaintiffs get right to develope the property because of clause (9) of the agreement dated 2nd July, 1999. Clause (9) of the agreement reads as under:-

> 9. The Purchasers are entitled to deal with dispose off, part with possession or create any third party interest and/or to sell the said property with or without structure on ownership basis or on whatsoever basis to any person or persons and receive the amount and release the

receipt for the same.

This suit is for specific performance of the agreement dated 2nd July, 1999. Perusal of clause (9) quoted above does not clearly say that even without the sale-deed the Plaintiffs are entitled to develope the property. Had there been an intention of the parties to give right to the Plaintiffs to develope the property even without the sale-deed, as the property is situated in Bombay, there would have been provision made in the agreement empowering the Plaintiffs to submit a building plan to the planning authority. In the absence of any building plan being submitted no construction can be carried out. Therefore, in my opinion, it cannot be said that the Plaintiffs are permitted by the agreement dated 2nd July, 1999 to develope the property even before the sale-deed is executed. In my opinion, therefore, the Plaintiffs are not entitled to temporary injunction which permits the Plaintiffs to develope the property. Hence, Notice of Motion is granted in terms of prayer clause (a), excluding the bracketed portion. Motion disposed of.

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